SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 440

BESSIE B. COX and JOHN G. THOMPSON, as Administrators of the Estate of Sid Cox, Deceased; HENRIETTA A. FARRINGTON; and HOWARD C. FARRINGTON,

Petitioners,

—vs—

ARTHUR ROTH, as Administrator of the Estate of James Dean, Deceased,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES.

Your Petitioners, BESSIE B. COX and JOHN G. THOMPSON, as Administrators of the Estate of Sid Cox, Deceased;

HENRIETTA A. FARRINGTON; and HOWARD C. FARRINGTON, pray that a Writ of Certiorari issue to review the decision of the United States Court of Appeals for the Fifth Circuit rendered on January 15, 1954 (Rehearing Denied, February 5, 1954), reversing a Summary Judgment of Dismissal of the District Court for Southern Florida, filed December 8, 1952. (R. 11.)

JURISDICTION

Jurisdiction to review this case is based on 28 U. S. Code, Sec. 1254 (1). The opinion below was filed January 15, 1954, and rehearing was denied February 5, 1954. (R. 36.)

SUMMARY STATEMENT

In December, 1949, the M/V "WINGATE", of Honduran registry, sailed from Matanzas, Cuba. Several days later, the bodies of the Master and part owner, H. C. FARRINGTON, and of one other crew member were washed ashore on the Cuban coast. No word has ever been received from the vessel and her wreckage, if any there be, has never been found. At the time of her disappearance, the "WINGATE" was owned by H. C. FARRINGTON, SID COX, and another, all residents of Florida.

The Respondent Administrator brought this action in October, 1952, alleging that his intestate was a member of the crew of the "WINGATE". He brings this suit under the provisions of Sec. 33 of the Merchant Marine Act of 1920; 41 Stat. 988, c. 25[illegible] 46 U. S. Code, Sec. 688, (commonly referred to as the Jones Act) to recover for his intestate's alleged death. The Defendants are the administrators of

the Estate of SID COX, who died in 1950, and HOWARD C. FARRINGTON and HENRIETTA A. FARRINGTON, as distributees of the Estate of H. C. FARRINGTON. The Estate of CAPT. FARRINGTON was probated and the administratrix was discharged prior to the filing of this cause. No notice of claim was filed by the Plaintiff in either Estate within eight months from the publication of the first Notices to Creditors, as is required by Sec. 733.16 (1), Fla. Stat.

Two other suits of a similar nature arising out of the disappearance of the "WINGATE" have also been filed. The Defendants filed Motions for Summary Judgment in all actions. The District Court granted the motions in this case. Final determination of the other two suits has been held in abeyance pending the outcome of the appeal and petition for Writ of Certiorari in this case.

THE DECISION BELOW

The District Court, without opinion, granted the motions for Summary Judgment (R. 11) and dismissed the Complaint.

The Court of Appeals held that even though the Jones Act did not create a cause of action in the Plaintiff, since it did not provide for the survivorship of claims against deceased tort feasors, the laws of Florida did permit the survivorship of such causes of action. Upon the strength of this reasoning, it then held that claims under the Jones Act against estates administered in Florida were not governed by the Florida Non-Claim Statute, Sec. 733.16 (1), Fla. Stat., and that the Plaintiff could maintain this action even though

no claim had been filed within the time provided by that statute. The judgment of the District Court was, accordingly, reversed (R. 20).

Hutcheson, C. J., dissented (R. 27).

STATUTES INVOLVED

Sec. 33 of the Merchant Marine Act of 1920; 41 Stat. 988, c. 250; 46 U. S. Code, Sec. 688.

Amendment 10 to the United States Constitution Sec. 733.16 (1), Fla. Statutes (See Appendix for text).

QUESTIONS PRESENTED

1. Where a foreign flag vessel is lost upon the high seas and beyond the territorial jurisdiction of the forum, is not the question of the survivorship of a cause of action founded upon such loss against a deceased tort feasor to be determined by the Maritime Law rather than by the law of the forum?

2. If the law of the forum as to survivorship of actions is to apply, must not the plaintiff (in a Jones Act case) comply with all of the applicable laws of that forum, including specifically the requirement that notice of such claim must be filed in estate proceedings within a specified time?

3. Does not the tenth amendment to the United States Constitution reserve to the states the exclusive power to govern the administration and distribution of the estates of decedents, and does not the decision of the Court of Appeals

in ignoring the non-claim section of the Florida probate law do violence to that amendment by permitting a Federal law, the Jones Act, to interfere with the administration of decedents' estates?

REASONS FOR ALLOWANCE OF THE WRIT

I.

THE DECISION BELOW IS IN CONFLICT WITH THE APPLICABLE DECISIONS OF THIS COURT AND OF OTHER COURTS OF APPEAL.

QUESTION 1.

Where a foreign flag vessel is lost upon the high seas and beyond the territorial jurisdiction of the forum, is not the question of the survivorship of a cause of action founded upon such loss against a deceased tort feasor to be determined by the Maritime Law rather than by the law of the forum?

This action is against the administrators and distributees of the Estates of two deceased boat owners, and it is founded solely upon the Jones Act. The Court of Appeals clearly recognized that the Jones Act did not confer upon the Plaintiff a right of action against the representatives of such deceased tort feasors. That Court then held that whether or not there was a right of survivorship must, therefore, be determined by the common law. It was then found that under the common law of Florida, the state of the forum, such an action would survive as against these defendants. In reaching a conclusion as to the survivorship of this cause

of action, the Court below either overlooked or completely ignored the basic doctrine that the survivorship of actions against deceased tort feasors is a part of the **substantive** law of the case, and must be governed by the lex loci delicti commissi — not by the lex fori. In this respect the decision below is clearly in conflict with the decision of this Court in **Ormsby v. Chase,** 290 U. S. 387, 54 S. Ct. 211, 78 L. Ed. 378. In that case, an action was brought against the executor in Pennsylvania on a tort committed by the deceased in New York. While Pennsylvania recognized the survivorship of actions against deceased tort feasors, New York did not. In denying the claim, this Court said:

> "But the law of the place of the wrong determines whether the claim for damages survives the death of the wrongdoer"
>
> and
>
> "She (the Plaintiff) could derive no substantive rights from the Pennsylvania survival statute."

As the alleged death occurred on board a foreign flag vessel on the high seas, and not within the territorial waters of the State of Florida, the Court of Appeals should have looked to the maritime law—not the Florida law—to determine the survivorship of this action against these deceased tort feasors.

This is not the same case as was presented to this Court in **Just v. Chambers,** 312 U. S. 383, 61 S. Ct. 687, 85 L. Ed. 903. There, the accident occurred within Florida territorial waters and this Court held that the cause would,

therefore, survive under the Florida law. Here, such accident occurred outside of the state's territorial waters. It must, therefore, be governed by the general maritime law. Decisions there found all indicate that under maritime law there is no such survivorship. **Chambers v. Just,** 113 F. (2d) 105, (reversed on other grounds, 312 U. S. 383); **Crapo v. Allen,** Fed. Cases, No. 3360; **in re Statler,** 31 F. (2d) 767; see also note 4 to Mr. Justice Hughes opinion in **Just v. Chambers,** supra.

QUESTION 2.

If the law of the forum as to survivorship of actions is to apply, must not the plaintiff (in a Jones Act case) comply with all of the applicable laws of that forum, including specifically the requirement that notice of such claim must be filed in estate proceedings within a specified time?

The decision below, in finding a cause of action for the respondent, departs from those of this court in still another instance. As before mentioned, the Court of Appeals based the Respondent's right upon the survivorship provision of the Florida law. Yet, that Court refused to apply the other provisions of the Florida law relative to the manner in which such claims must be presented. Specifically, it failed to recognize the section which requires a notice of such claim to be filed in the probate proceedings within eight months from the first publication of notice to creditors, Sec. 733.16 (1) Fla. Stat. This section further provides that any claim not so filed shall be **void.**

We do not believe that the respondent may accept the benefit of those parts of the law of Florida which suit him,

while ignoring the companion parts of the law which bar his claim. But this is exactly what the Court below has held. Again, the decision is in clear conflict with prior decisions of this Court. **The Harrisburg,** 119 U. S. 199, 7 S. Ct. 140, 30 L. Ed. 358; **Western Fuel Co. v. Garcia,** 257 U. S. 233, 42 S. Ct. 89, 66 L. Ed. 210; **Levinson v. Deupree,** 345 U. S. 648, 73 S. Ct. 914, 97 L. Ed. 1319. It is also contrary to the recent decision of the Fourth Circuit in **Continental Casualty Co. v. The Benny Skou,** 200 F. (2d) 246.

In **The Harrisburg,** supra, it was held that where an action is founded upon a right granted by a state, the time within which suit may be brought acts as a limitation upon such right. In **Continental Casualty Co. v. The Benny Skou,** the Fourth Circuit said:

> "Virginia has bestowed upon admiralty a right to grant recovery not previously possessed by admiralty. The endowment must be taken cum onere. As Appellant grounds his action upon the Virginia Statute, he is obliged to accept the statute in its entirety as construed by the Virginia court of last resort."

Certainly, the decision below violates these principles.

II.

THE DECISION BELOW CONSTITUTES A VIOLATION OF THE TENTH AMENDMENT OF THE UNITED STATES CONSTITUTION, AND DECIDES AN IMPORTANT QUESTION OF LOCAL LAW CONTRARY TO THE APPLICABLE DECISIONS OF THIS COURT AND OF STATE COURTS.

QUESTION 3.

Does not the tenth amendment to the United States Constitution reserve to the states the exclusive power to govern the administration and distribution of the estates of decedents, and does not the decision of the Court of Appeals in ignoring the non-claim section of the Florida probate law do violence to that amendment by permitting a federal law, the Jones Act, to interfere with the administration of decedents' estates?

The Statute of Limitations under the Jones Act is three years. Admittedly, no state may impose any shorter limitations upon that right. **Engle v. Davenport,** 271 U. S. 33, 46 S. Ct. 410, 70 L. Ed. 813. But what effect does that right have upon the probate laws of the States? Can the Jones Act invade the probate field and, in effect, nullify and disrupt the administration of estates under the applicable state laws? The decision of the Court of Appeals holds that it can. This view, we contend, is an unconstitutional invasion by the federal law of those powers reserved to the states by the Tenth Amendment.

The settlement and distribution of decedents' estates has always been considered to rest wholly within the power of the states. In **Harris v. Zion Savings Bank and Trust Company,** 317 U. S. 447, 63 S. Ct. 357, 87 L. Ed. 390, a case involving a conflict between the Bankruptcy Act and the Utah probate law, this Court held:

"When we reflect that the settlement and distribution of decedents' estates and the right to succeed to the

ownership of realty and personalty are peculiarly matters of state law; that the federal courts have no probate jurisdiction and have sedulously refrained even in diversity cases from interfering with the operations of state tribunals invested with that jurisdiction, we naturally incline to a construction of Sec. 75, consistent with these principles. We think the beneficial purpose of the legislation will not be defeated by such a construction."

The Tenth Circuit had previously said in that case:

"Federal courts have no probate jurisdiction. Power to administer estates resides entirely with the states." **Harris v. Zion Savings Bank and Trust Company,** 127 F. (2d) 1012.

In **Cope v. Cope,** 137 U. S. 682, 11 S. Ct. 222, 34 L. Ed. 832, the same conclusion was reached. That case involved the powers of the Utah Territorial Legislature. This Court found that such powers, except as limited by the Territorial Government Act, were as plenary as those of a state legislature, and then said:

"The distribution of and the right of succession to estates of deceased persons are matters exclusively of state cognizance, and are such as were within the competence of the territorial Legislature to deal with as it saw fit. . . ."

The above decisions are in full accord with that of the Supreme Judicial Court of Massachusetts in **Petition of Worcester County National Bank,** 263 Mass. 217, 162 N. E. 217.

In considering a conflict between the National Banking Act and the Massachusetts probate law, that court ruled:

> "It seems to us not open to debate that the general subject of the settlement of estates of deceased persons and the appointment of fiduciaries to administer trusts is within the exclusive jurisdiction of the state. No clause of the Constitution of the United States confers any such power upon the Congress, Art. 1, Sec. 8. That power is not forbidden to the states, Art. 1, Sec. 10. It is made purely of state rather than national cognizance. It falls among the powers reserved to the states by Article 10 of the Amendments."

While the "WINGATE'S" owners were alive, the Federal acts, under the maritime power granted to the Federal government by the Constitution, had full power to prescribe the nature and duration of their liability to the respondent. When they passed away the administration of their estates became, under the reservation contained in the Tenth Amendment, solely a matter to be determined and governed by the law of Florida. Any conflict between the Federal maritime laws and the Florida probate laws concerning the administration of Florida estates must be resolved in favor of the probate laws. Such was the ruling of this Court in the Harris case, supra, with respect to conflicts between bankruptcy and probate laws. And such was the ruling of the Massachusetts court in the Worcester National Bank case, supra, with respect to conflicts between banking and probate laws. The Federal government's power to enact bankruptcy, banking and maritime laws is co-extensive.

Principles of conflict applicable to one of these fields must be applicable to all.

No logical or legal reason can be found to support the law announced by the Court below to the effect that seamen need not be governed in the presentation of a claim against an estate by the same laws which apply to all other claimants. Not only does this constitute an invasion of the state's exclusive power to regulate the administration of estates, it amounts to a complete nullification of that power. No better example of this can be found than the present situation of the petitioners HOWARD C. FARRINGTON and HENRIETTA A. FARRINGTON. The estate of CAPTAIN FARRINGTON was completely and finally administered under the laws of the State of Florida and distribution of its assets was made to these petitioners many, many months prior to the time that the respondent filed this suit. If the respondent is successful here, that administration is completely frustrated and held for naught.

The prior decisions of this Court certainly do not allow such an invasion of the States authority over the administration of decedent's estates.

CONCLUSION

For the reasons set forth above, we respectfully submit that this Court should issue its Writ of Certiorari in this cause.

Respectfully submitted,

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APPENDIX

Section 733.16 (1), Florida Statutes.

Form and manner of presenting claims: limitation

"(1) No claim or demand, whether due or not, direct or contingent, liquidated or unliquidated, or claim for personal property in the possession of the personal representative or for damages, including but not limited to actions founded upon fraud or other wrongful act or commission of the decedent, shall be valid or binding upon an estate, or upon the personal representative thereof, or upon any heir, legatee or devisee of the decedent unless the same shall be in writing and contain the place of residence and postoffice address of the claimant, and shall be sworn to by the claimant, his agent or attorney, and be filed in the office of the county judge granting letters. Any such claim or demand not so filed within the eight months from the time of the first publication of the notice to creditors shall be void even though the personal representative has recognized such claim or demand by paying a portion thereof or interest thereon or otherwise; and no cause of action, at law or in equity, heretofore or hereafter accruing, including but not limited to actions founded upon fraud or other wrongful act or omission, shall survive the death of the person against whom such claim may be made, whether suit be pending at the time of death of such person or not, unless such claim be filed in the manner and within the said eight months as aforesaid;"